

Message Text

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R 101951Z APR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 7520
INFO USMISSION USBERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 01 OF 05 BONN 06508

E.O. 11652: GDS
TAGS: PGOV, BQG
SUBJECT: HESS' APPEAL TO THE FEDERAL CONSTITUTIONAL
COURT AND ALLIED EFFORTS TO OBTAIN HIS RELEASE

BEGIN SUMMARY: FOR ITS PRELIMINARY CONSIDERATION OF AN
APPEAL BROUGHT IN A SUIT ON BEHALF OF RUDOLF HESS, THE
FEDERAL CONSTITUTIONAL COURT HAS ASKED THE FRG TO
PROVIDE IT WITH A REPORT ON THE EFFORTS THE FRG HAS
MADE TO OBTAIN HESS' RELEASE FROM SPANDAU PRISON.
THE FINAL DRAFT OF THE GOVERNMENT REPORT, PRESENTED FOR
REVIEW TO THE ALLIES IN THE BONN GROUP, ALSO INCLUDES
A LIST OF SOME OF THE ALLIED DEMARCHES MADE ON BEHALF
OF HESS. THE FRG HAS ASKED IF WE HAVE ANY OBJECTION TO
MENTION OF OUR ROLE, SINCE THE REPORT, AS IS USUAL, WILL
BE AVAILABLE TO THE PLAINTIFF'S COUNSEL. THE FRG PLANS
NO PUBLIC RELEASE OF THE DOCUMENT, BUT THE PLAINTIFF'S
COUNSEL CANNOT BE PREVENTED FROM DOING SO. ACTION
REQUESTED: SEE PARAGRAPH 15. END SUMMARY

1. LAST FALL THE FAMILY OF RUDOLF HESS BROUGHT A SUIT
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AGAINST THE FEDERAL GOVERNMENT WHICH CALLED FOR AN
INJUNCTION ORDERING THE FRG: 1) TO STATE PUBLICLY STATE
THAT HESS' CONTINUING IMPRISONMENT WAS A VIOLATION OF
HUMAN RIGHTS; 2) TO TAKE ALL APPROPRIATE STEPS WITH THE
FOUR POWERS, ESPECIALLY THE UK, TO OBTAIN HIS RELEASE;
AND 3) TO ASK THE UN BOTH TO DECLARE HIS IMPRISONMENT
A VIOLATION OF HUMAN RIGHTS AND TO DIRECT THE FOUR

POWERS TO RELEASE HIM IMMEDIATELY. THIS SUIT, REJECTED BY THE COLOGNE ADMINISTRATIVE COURT AS NON-JUSTICIABLE, HAS BEEN APPEALED BY HESS' LAWYER TO THE FEDERAL CONSTITUTIONAL COURT (FCC). (MORE DETAILED INFORMATION ON THE SUIT WAS POUCHED TO USBER AND THE DEPARTMENT (EUR/CE) ON SEPTEMBER 7, 1977 AND MARCH 1, 1978.)

2. AT THE MARCH 1 BONN GROUP MEETING, THE FRG REP (WEGENER) REPORTED THAT THE FCC HAD ASKED THE FEDERAL GOVERNMENT FOR A STATEMENT ON THE STEPS THE GOVERNMENT HAD UNDERTAKEN TO SECURE HESS' RELEASE. WEGENER SAID THE FRG BELIEVED IT NECESSARY TO MAKE A STATEMENT WHICH WOULD SHOW THE BROAD LEGAL AND POLITICAL FRAMEWORK OF THE ISSUE. THIS WOULD MAKE CLEAR THE CONSTRAINTS ON FRG AND ALLIED ACTION IMPOSED BY THE NECESSITY OF QUADRIPARTITE AGREEMENT TO ANY CHANGE INVOLVING HESS. THE FRG HOPED TO BE ABLE IN THIS WAY TO CONVINCE THE COURT TO RULE THAT THE APPEAL WAS INADMISSIBLE. WEGENER ADDED THAT IF THE FRG DID NOT APPEAR TO THE FCC TO BE FORTHCOMING IN ITS REPLY, IT COULD HARM THE FRG'S CASE. THE FRG MIGHT FIND ITSELF COMPELLED BY THE COURT TO TAKE PUBLIC OR DIPLOMATIC STEPS TO ATTEMPT TO SECURE THE RELEASE OF HESS, WHICH STEPS COULD BE EMBARRASSING TO IT AND THE ALLIES.

3. THE ALLIED REPS DID NOT OBJECT TO WEGENER'S SUGGES-
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TION THAT THE FRG INCLUDE INFORMATION ON THE ALLIED POSITION, BUT THEY NOTED THAT ALLIED GOVERNMENTS SHOULD CLEAR THOSE PORTIONS OF THE TEXT WHICH MENTIONED THE ALLIES.

4. AT THE MARCH 14 BONN GROUP MEETING, THE FRG REP (VON BRAUNMUEHL) DISTRIBUTED COPIES OF THE FOREIGN OFFICE-DRAFTED STATEMENT WHICH THE FRG PROPOSED TO PRESENT TO THE FCC.
(COPY OF ORIGINAL POUCHED TO USBER AND EUR/CE ON MARCH 16, 1978.) HE NOTED THAT IT HAD NOT YET RECEIVED CLEARANCE FROM THE MINISTRY OF JUSTICE. THE US REP SAID THAT HE WOULD DELAY REPORTING UNTIL FINAL FRG CLEARANCE OF THE DRAFT HAD BEEN OBTAINED. THE FRG REP AGREED TO INQUIRE WHETHER IT WOULD BE POSSIBLE TO ENSURE THAT THE PLAINTIFF'S LAWYER COULD BE PREVENTED FROM RELEASING THE REPORT WITHOUT THE FOREIGN OFFICE'S CONSENT (FOR WHICH THE FOREIGN OFFICE WOULD OBTAIN ALLIED APPROVAL).

5. AT THE MARCH 30 BONN GROUP MEETING, THE FRG REP (VON RICHTHOFEN) REPORTED THAT THE JUSTICE MINISTRY HAD

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CLEARED THE FOREIGN OFFICE DRAFT WITHOUT CHANGE. HE
ASKED THAT THE ALLIES PROVIDE THEIR COMMENTS IN ORDER TO
ALLOW THE FRG TO FORWARD THE REPORT TO THE FCC AS SOON
AS POSSIBLE. HE ALSO SAID THAT THE FCC COULD NOT PREVENT
THE PLAINTIFF FROM MAKING PUBLIC THE INFORMATION PROVIDED
BY THE FRG CONCERNING ALLIED INVOLVEMENT.

6. THE ALLIED BONN GROUP REPS DISCUSSED POSSIBLE CHANGES
ON APRIL 3. RICHARD SAID PARIS BELIEVED THAT THE LIST
IN PART III OF THE STEPS TAKEN BY THE ALLIES AND THE
FRG SHOULD BE DIVIDED INTO TWO PARTS. A DISTINCTION
HAD TO BE MADE, HE SAID, BETWEEN THE ALLIES, WHO HELD
HESS IN CUSTODY, AND THE FRG, WHICH HAD NO SPECIAL
STANDING VIS-A-VIS HESS. FURTHERMORE, PART II OF THE
GERMAN DRAFT DISTINGUISHED BETWEEN THE FRG AND THE
ALLIED POSITIONS. IT WAS THUS LOGICAL TO CONTINUE THE
DISTINCTION INTO PART III.

7. RICHARD SAID THAT PARIS ALSO BELIEVED THAT ALLIED
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EFFORTS SHOULD NOT BE DESCRIBED IN DETAIL (MONTH, YEAR, AND LEVEL) AS DONE IN PART III, BUT ONLY IN VERY GENERAL TERMS. EATON RESPONDED THAT, FOR ITS PART, LONDON WOULD NOT HAVE OBJECTED TO AN EVEN MORE DETAILED ACCOUNT.

8. THE US REP NOTED THAT THE FEDERAL GOVERNMENT'S PURPOSE IN PROVIDING SOME DETAIL WAS TO INCREASE THE CREDIBILITY OF ITS CASE THAT NOTHING MORE COULD BE DONE THAN IS ALREADY BEING DONE TO FREE HESS. IF THE FCC ACCEPTED THIS ARGUMENT, IT WOULD PROBABLY REJECT HESS' APPEAL AS NON-JUSTICIABLE. HE COMMENTED THAT AN FCC DECISION TO HEAR THE APPEAL ON THE MERITS COULD SEE THE FEDERAL GOVERNMENT OBLIGATED TO INTENSIFY ITS EFFORTS CONCERNING HESS. THIS, IN TURN, COULD INCREASE PUBLIC DEMANDS IN THE FRG FOR HESS' RELEASE AND RESULT IN A BAD PRESS FOR THE ALLIES. IT COULD ALSO COMPLICATE OUR EFFORTS WITH THE SOVIETS TO OBTAIN HIS RELEASE. HE SAID HE HAD NO DIFFICULTY WITH THE QUAI'S SUGGESTION, PROVIDED THE FRG AGREED. HOWEVER, WE SHOULD DEFER TO THE FRG ON TACTICS.

9. RICHARD REPLIED THAT HE DOUBTED THE ADDITIONAL DETAIL WOULD DO MUCH TO INCREASE THE CREDIBILITY OF THE GOVERNMENT'S CASE. IN ANY EVENT, HIS INSTRUCTIONS WERE VERY STRICT. HE SAID, HOWEVER, THAT HE WOULD RECOMMEND TO PARIS THAT THE FRG BE PERMITTED TO LIST THE MONTH AND YEAR OF THE ALLIED DEMARCHES, SINCE THE YEARS IN WHICH THE DEMARCHES HAD BEEN MADE WERE ALREADY PUBLIC KNOWLEDGE.

10. EATON SAID THAT, IN THE INTERESTS OF AGREEMENT, HE WOULD RECOMMEND THAT LONDON SATISFY ITSELF WITH THIS CONFIDENTIAL

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DEGREE OF DETAIL.

11. FINALLY, RICHARD SAID THAT PARIS FELT THAT THE LAST TWO SENTENCES OF THE GERMAN TEXT COULD BE INTERPRETED AS IMPLYING THAT THE CASE OF RUDOLF HESS INVOLVED A VIOLATION OF HUMAN RIGHTS, A POSITION THE THREE POWERS HAD NEVER ACCEPTED. EATON AND THE US REP AGREED WITH RICHARD THAT THE PROBLEM COULD BE SOLVED SIMPLY BY DELETING THE TWO SENTENCES.

12. THE THREE REPS ALSO AGREED TO ANOTHER CHANGE. THE GERMAN TEXT MADE USE OF THE WORD "BEGNADIGUNG," WHICH

MAY BE TRANSLATED AS "PARDON." A PARDON, HOWEVER, IS AN ACT WHICH, IN ANGLO-AMERICAN JURISPRUDENCE, ERASES GUILT. EVEN THOUGH IT WAS UNDERSTOOD THAT THE GERMAN USE OF THE TERM "BEGNADIGUNG" APPARENTLY DOES NOT ADDRESS THE QUESTION OF GUILT, IT WAS AGREED THAT "FREILASSUNG" ("RELEASE") WOULD BE A MORE PRUDENT CHOICE SINCE THE SOVIETS (AND OTHERS) COULD TRANSLATE IT AS "PARDON."

13. THESE POINTS WERE PRESENTED TO AND ACCEPTED BY THE FRG REP (WEGENER) AT THE APRIL 4 BONN GROUP MEETING. AT THE APRIL 7 BONN GROUP MEETING, WEGENER PRESENTED A REVISED TEXT INCORPORATING THE ALLIED SUGGESTIONS. HE SAID THAT, ALTHOUGH HE COULD NOT RULE OUT THE POSSIBILITY OF ADDITIONAL MINOR CHANGES IN THE TEXT AS A RESULT OF INTERNAL FRG CONSULTATIONS, IT WAS THE FINAL TEXT IN ALL POINTS WHICH WOULD CONCERN THE ALLIES.

14. FOLLOWING IS AN UNOFFICIAL TRANSLATION OF THE TEXT

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PRESENTED TO THE BONN GROUP ON APRIL 7 (COPY OF NEW GERMAN TEXT BEING POUCHED TO EUR/CE AND USBER).

BEGIN TEXT

SUBJECT: APPEAL TO THE CONSTITUTIONAL COURT LODGED BY
RUDOLF HESS AGAINST THE FEDERAL REPUBLIC OF
GERMANY AND THE LAND OF NORTH RHINE-WESTPHALIA;
DESCRIPTION OF THE EFFORTS HITHERTO MADE BY
THE FEDERAL GOVERNMENT ON BEHALF OF RUDOLF
HESS AND STATEMENT OF THE POLITICAL PROSPECTS
TO BE EXPECTED FROM ANY MEASURES TAKEN UNDER
AN INTERIM ORDER.

I.

THE EFFORTS MADE BY THE FEDERAL REPUBLIC OF GERMANY IN
ORDER TO ACHIEVE THE RELEASE OF RUDOLF HESS FROM PRISON
ARE SUBJECT TO THE FOLLOWING GENERAL CONDITIONS: RUDOLF
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HESS WAS SENTENCED TO LIFE-LONG IMPRISONMENT BY THE
INTERNATIONAL MILITARY COURT IN NUREMBERG BECAUSE HE
HAD COMMITTED A CRIME AGAINST PEACE. THE CARRYING OUT
OF THE SENTENCE OF THE NUREMBERG COURT IS PART OF THE
RESERVED RIGHTS OF THE POWERS VICTORIOUS IN THE SECOND
WORLD WAR, WHICH REST ON THE ASSUMPTION OF SUPREME
AUTHORITY IN GERMANY IN 1945, AND ARE STILL EXTANT. IT
WAS (AND STILL IS) STIPULATED THAT THERE MUST BE
UNANIMOUS AGREEMENT ON ANY MEASURES TAKEN IN RESPECT OF
THE EXECUTION OF THE JUDGMENTS IN ACCORDANCE WITH THE
AGREEMENTS MADE BY THE FOUR POWERS IN THE POST-WAR
PERIOD.

II.

1.) FOR HUMANITARIAN REASONS, THE FEDERAL REPUBLIC OF
GERMANY HAS BEEN TRYING TO INDUCE ALL FOUR PROTECTING
POWERS TO RELEASE RUDOLPH HESS SINCE THE RELEASE OF THE
TWO OTHER PRISONERS, SPEER AND VON SCHIRACH, WHO WERE
ALSO HELD PRISONER IN SPANDAU AND WERE SET FREE IN 1966.
THE FRG HOLDS THE OPINION THAT IN VIEW OF THE PRISONER'S
OLD AGE AND THE LONG PERIOD OF IMPRISONMENT IT APPEARS
TO BE DICTATED BY HUMANITY THAT RUDOLF HESS
SHOULD BE RELEASED INTO FREEDOM. ONLY PART OF THE
EFFORTS THAT HAVE BEEN MADE HAVE BECOME KNOWN TO THE
GENERAL PUBLIC.

2.) THE THREE WESTERN PROTECTING POWERS ARE OPEN TO THE
HUMANE ASPECTS OF THE RUDOLF HESS CASE AND FOR A LONG
TIME HAVE BEEN PREPARED TO RELEASE HIM. THEY
THEMSELVES HAVE AGAIN AND AGAIN MADE ATTEMPTS - ALSO
ON THE FEDERAL GOVERNMENT'S INITIATIVE - TO OBTAIN THE

SOVIET UNION'S AGREEMENT TO HIS RELEASE. SINCE THE
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PRINCIPLE OF UNANIMITY IS APPLIED, IT IS ONLY THE SOVIET
UNION'S REFUSAL TO AGREE WHICH HAS THWARTED
THE LATTER.

3.) FOR MANY YEARS, THE SOVIET UNION HAS REFUSED A
RELEASE ON THE GROUNDS THAT HUMANITY WOULD BE UNDERSTOOD
IN THE WRONG WAY IF RUDOLF HESS WERE RELEASED FROM
PRISON SINCE HE HAS NOT SHOWN ANY REPENTANCE FOR THE
CRIMES HE COMMITTED; ON THE CONTRARY, UP TO NOW HE HAS
REAFFIRMED HIS IDEAS. UNDER THESE CIRCUMSTANCES,
RELEASE OF RUDOLF HESS WOULD MEAN AMNESTY FOR
NAZISM AND FASCISM; IT WOULD ENCOURAGE NAZI FORCES,
AND THOSE WHO HAVE ABJURED NATIONAL SOCIALISM WOULD NOT
UNDERSTAND SUCH A DECISION.

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III.

1.) SINCE 1966 THERE HAVE BEEN A NUMBER OF INITIATIVES AT THE DIPLOMATIC AND THE POLITICAL LEVEL TAKEN BY BOTH GERMANY AND THE WESTERN ALLIES TO OBTAIN THE RELEASE OF RUDOLF HESS.

A.) THE FEDERAL GOVERNMENT UNDERTOOK A SERIES OF STEPS VIS-A-VIS THE FOUR CUSTODIAL POWERS, ESPECIALLY THE SOVIET UNION.

THESE INCLUDE, ABOVE ALL, THE FOLLOWING STEPS:

(1) 1971-1973: NUMEROUS TALKS HELD BETWEEN THE UNDER SECRETARY OF STATE AT THE MINISTRY OF FOREIGN AFFAIRS, HERR FRANK, AND THE SOVIET AMBASSADOR IN BONN, MR. FALIN.

(2) APRIL 1974: IN SIMILARLY WORDED LETTERS
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ADDRESSED TO THE HEADS OF STATE OF THE FOUR PROTECTING POWERS, FEDERAL PRESIDENT HEINEMANN REQUESTED THAT RUDOLF HESS SHOULD BE RELEASED.

(3) NOVEMBER 1975: DURING HIS STATE VISIT TO THE SOVIET UNION, FEDERAL PRESIDENT SCHEEL RAISED THE QUESTION OF THE RELEASE OF RUDOLF HESS WITH THE PRESIDENT OF THE SUPREME SOVIET, MR. PODGORNYY.

B) THE THREE WESTERN CUSTODIAL POWERS -- IN CONSULTATION ("ABSTIMMUNG") WITH THE FEDERAL GOVERNMENT -- HAVE ALSO MADE REPEATED ATTEMPTS TO PERSUADE THE SOVIET UNION TO RELEASE RUDOLF HESS IMMEDIATELY FOR HUMANITARIAN REASONS.

DEMARCHES AT A HIGH LEVEL WERE MADE, FOR INSTANCE, IN APRIL 1966, SEVERAL TIMES IN THE YEARS OF 1968 AND 1969, IN FEBRUARY 1970, IN JUNE 1972, AND AGAIN IN MARCH/APRIL 1977. IN EACH OF THESE CASES THE SOVIET ANSWER WAS NEGATIVE. THE THREE POWERS INTEND, HOWEVER, TO CONTINUE THESE EFFORTS TO OBTAIN HESS' RELEASE AND -- IN THE MEANTIME -- FURTHER TO ALLEVIATE THE CONDITIONS OF HIS IMPRISONMENT.

2.) MOST RECENTLY OF ALL, FEDERAL PRESIDENT SCHEEL APPROACHED THE FOUR HEADS OF STATE BY LETTER IN JULY 1977 AND ASKED FOR RUDOLF HESS' RELEASE.

IN THE LETTERS, THE FEDERAL PRESIDENT EXPLAINED

RUDOLF HESS' DESPERATE SITUATION AND REQUESTED THAT
HESS SHOULD BE GRANTED FREEDOM FOR THE REMAINING SHORT
TIME OF HIS LIFE; HE POINTED OUT THAT SUCH AN ACT OF
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MERCY MIGHT HAVE A POSITIVE EFFECT ON RELATIONS BETWEEN
PEOPLES; AT THE SAME TIME HE STATED THAT THE
IMMENSE HARM THAT WAS CAUSED BY RUDOLF HESS AND OTHERS
SHOULD NOT AND COULD NOT BE FORGOTTEN EVEN IF HE
WERE RELEASED.

THE PRESIDENT OF THE UNITED STATES, THE BRITISH QUEEN,
AND THE FRENCH PRESIDENT EXPRESSED THEIR UNDERSTANDING
FOR THE FEDERAL PRESIDENT'S REQUEST AND THEIR READINESS
TO CONTINUE ACTIVELY TRYING TO CONVINCE THE SOVIET
UNION THAT HERR RUDOLF HESS SHOULD BE RELEASED; THEY
STATED, HOWEVER, THAT, DUE TO THE SOVIET UNION'S
REFUSAL AND THE EXISTING AGREEMENTS CONCLUDED
BETWEEN THE FOUR POWERS, THEY WERE NOT ABLE TO ACHIEVE
HIS IMMEDIATE RELEASE.

THE SOVIET GOVERNMENT AGAIN REFUSED TO GRANT A RELEASE
ON THE GROUNDS THAT RUDOLF HESS HAD NOT SHOWN ANY
REPENTANCE UP TO NOW AND HAD NOT ABJURED
NATIONAL SOCIALISM, ALTHOUGH THIS TIME THE WAY IN WHICH
THE REPLY WAS FORMULATED WAS LESS NEGATIVE THAN IN
FORMER DEMARCHES; THE FACT THAT MAJOR EMPHASIS WAS PUT
ON THE CONDITIONS OF REPENTANCE AND A CHANGE IN HESS'

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ATTITUDE SHOWED THAT THE SOVIET GOVERNMENT INTENDS TO
KEEP AN OPEN MIND IN CASE RUDOLF HESS WERE PREPARED TO
CONFESS HIS REMORSE TO THE GENERAL PUBLIC.

IV.

THE FEDERAL GOVERNMENT GAVE THE FOLLOWING COMMENTS ON
THE STEPS ENVISAGED BY THE COMPLAINANT IN HIS APPLICATION
FOR AN INTERIM ORDER:

1.) THE FEDERAL GOVERNMENT HAS TAKEN EVERY SUITABLE STEP
TO ACHIEVE AGREEMENT ON THE RELEASE OF RUDOLF HESS BY
THE FOUR POWERS AND WILL CONTINUE TO DO SO.

2.) THE ENVISAGED PUBLIC STATEMENT IS NOT A SUITABLE
MEANS OF ACHIEVING THAT AIM IN THE EXISTING LEGAL
SITUATION AND IN VIEW OF POLITICAL DEVELOPMENTS SO FAR;
ON THE CONTRARY, IT MAKES THE ACHIEVEMENT OF THE GOAL
LESS LIKELY.

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3.) EVEN IF THE CONTINUED IMPRISONMENT OF RUDOLF HESS
WERE A VIOLATION OF HUMAN RIGHTS, AN APPEAL TO THE
UNITED NATIONS ON BEHALF OF RUDOLF HESS WOULD BE
COMPLETELY HOPELESS AS AT PRESENT THERE IS VIRTUALLY
NO POSSIBILITY OF INSTITUTING PROCEEDINGS AT THE
UNITED NATIONS IN AN INDIVIDUAL CASE OF VIOLATING HUMAN
RIGHTS.

END TEXT

15. ACTION REQUESTED: THAT WE BE AUTHORIZED TO
INFORM THE BONN GROUP THAT WE HAVE NO OBJECTION TO THE
TEXT OF THE FEDERAL GOVERNMENT'S LETTER IN PARA 14
SUPRA.
STOESSEL

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FOR ITS PRELIMINARY CONSIDERATION
TAGS: PGOV, GE, BQG, (HESS, RUDOLF)
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